

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JAMES A. PETHEL,	§	
	§	Nos. 421/472, 2009
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	for New Castle County
	§	
STATE OF DELAWARE,	§	
	§	C.A. Nos. 09M-05-079
Plaintiff Below,	§	09M-07-124
Appellee.	§	

Submitted: February 28, 2011

Decided: May 3, 2011

Before **STEELE**, Chief Justice, **HOLLAND** and **RIDGELY**, Justices.

ORDER

This 3rd day of May 2011, it appears to the Court that:

(1) On July 25, 2008, the appellant, James A. Pethel, pled guilty to Arson in the Second Degree (“the arson case”). Pethel was sentenced to seven years at Level V suspended after six months for Level V work release followed by decreasing levels of probation.¹ By corrected sentence order dated August 3, 2009, the Superior Court changed the effective date of the July 25, 2008 sentence from March 8, 2007 to March 13, 2008.

(2) This consolidated appeal is from the Superior Court’s June 2, 2009 and August 4, 2009 denials of Pethel’s petitions for habeas corpus relief. By Order

¹ *State v. Pethel*, Del. Super., Cr. ID No. 0605001543, Jurden, J. (July 25, 2008) (sentencing).

dated July 26, 2010, we remanded the case to the Superior Court to determine whether the August 3, 2009 corrected sentence order had been docketed and a copy of the order provided to Pethel. Meanwhile, on July 23, 2010, Pethel was arrested and charged with violation of probation (VOP) in the arson case.

(3) In the July 29, 2010 order returning the matter from remand, the Superior Court provided:

Having determined [Pethel] did not receive a copy of the August 3, 2009 sentencing order, the [Superior] Court resentenced [Pethel]. A copy of the sentence order entered July 29, 2010 is attached. Having further determined that [Pethel] had been held at level 5 longer than the [Superior] Court ordered, the [Superior] Court discharged [Pethel's] probation in [the arson case].

(4) Upon return of the case from remand, this Court issued a notice directing that Pethel show cause why the appeal should not be dismissed as moot. In response to the notice, Pethel suggested that the Court should allow the appeal to continue to “vacate [his arson] conviction” and because the July 29, 2010 sentence “violate[d] ex post facto.” Pethel also contended that the Superior Court docket incorrectly stated that he was adjudged guilty of VOP.²

(5) The Court has reviewed the transcript of the remand hearing and the documents in the record in the arson case concerning the Superior Court's July 29, 2010 disposition of Pethel's VOP. Read together, the documents and transcript

² See docket at 90, *State v. Pethel*, Del. Super., Cr. ID No. 0605001543, (July 29, 2010) (stating that defendant was found in violation of probation and probation was discharged as unimproved).

reasonably support a conclusion that Pethel's probation in the arson case was discharged as unimproved on a technical violation that he had changed his residence without prior approval from his probation officer. To the extent Pethel argues otherwise, his claim is without merit.

(6) Pethel's contention that he was illegally detained does not provide a basis for the reversal of his arson conviction.³ Moreover, because Pethel has been released from the sentence that formed the basis of his habeas corpus petitions, his appeal from the denial of those petitions is now moot.⁴

NOW, THEREFORE, IT IS ORDERED that this consolidated appeal is DISMISSED as moot.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice

³ *Taylor v. State*, 1994 WL 716043 (Del. Supr.) (holding that "a writ of habeas corpus may not be used as a writ of error to obtain reversal of a conviction" (citing *Skinner v. State*, 135 A.2d 612, 613 (Del. 1957))).

⁴ *See Taylor v. State*, 2002 WL 31477136 (Del. Supr.) (citing Del. Code Ann. tit. 10, § 6902(1) (1999)); *Lee v. State*, 1999 WL 591457 (Del. Supr.).